



# Prosecuting Attorneys Association of Michigan

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May 6, 2008

Mr. Corbin Davis  
Clerk, Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

Dear Mr. Davis:

RE: File 2007-38

I am writing on behalf of the Prosecuting Attorneys Association of Michigan to state our opposition to the proposed change in MCR 6.201. While eliminating the phrase "upon request" seems a minor change, it produces a major impact upon the prosecutors of this state.

The proposed rule requires prosecutors to disclose "any exculpatory information or evidence known to the prosecuting attorney". The rule change makes this action self-executing on the prosecutor's part. Staff comments on the proposed change note the removal of the language "upon request" to be a clarification, but it is far more than that as the concept of "exculpatory evidence or information" and "Brady material" and not the same. In *Brady v Maryland*, 373 US 83 (1963), prosecutors were required by the court to disclose "without request" materially exculpatory evidence that is not otherwise reasonably available to a defendant by alternative means. Subsequent court decisions have set forth standards to be met before a violation on the part of a prosecutor may be found.

We are unaware nor does the proposal cite any prosecutors with the rule as currently constituted. I would also note that a prosecutor's failure in regard to discovery subjects them to a potential violation of 3.8(d) of the Rules of Professional Responsibility.

We would recommend that the rule remain as it presently exists. If, however, the court were to change the rule to eliminate the "upon request" language that it also strike the language "exculpatory evidence or information" and replace it with the term "Brady evidence" which as a term of art has 45 years of case history supporting its meaning and interpretation.

Sincerely,

  
Charles A. Koop  
President

